

## REMARKS

This election is submitted in response to the Office Action mailed April 19, 2005. In the Office Action, the Examiner restricted the application between two species, which the Examiner asserts are patentably distinct: species (1), comprising claims 1, 4, and 6-9 and species (2), comprising claims 11, 14, 16-19, 21, 24 and 26-29. Applicants have elected species (1) with traverse. Reasons for the traverse are explained below.

### Traversal of Restriction

Applicants respectfully traverse the Examiner's restriction. Applicants submit that the restriction is improper because the groups of claims identified by the Examiner are not distinct species, but rather have a genus-species relationship.

In general, a generic claim should include no material element additional to those recited in the species claims, and must comprehend within its confines the organization covered in each of the species. MPEP § 806.04(d). This is the case here: claim 1 recites a generic structure (*i.e.*, a genus), while independent claims 11 and 21 both recite combinations that fall within the confines of the combination recited in claim 1. For example, claim 1 in the alleged first species recites a structure formed on a multi-layer wafer, while claim 11 in the alleged second species recite that a structure is formed on a multi-layer wafer comprising "a single crystal silicon (SCS) layer separated by an insulator layer from a substrate layer." Claim 1 therefore recites a genus (a multi-layer wafer), while claim 11 recites a species (a multi-layer wafer comprising "a single crystal silicon (SCS) layer separated by an insulator layer from a substrate layer").

In addition to the fact that claim 1 is generic as discussed above, species (1) and (2) also cannot be separate species because claims to be restricted to different species must be mutually exclusive. Mutual exclusivity occurs when one claim recites limitations that under the disclosure are found in a first species but not in a second, while a second claim recites limitations disclosed only for the second species and not the first. MPEP § 806.04(f). In this case, there is no mutual exclusivity to justify the species restriction. For example, claim 1 in the alleged first species recites a structure formed on a multi-layer wafer, while claim 11 in the alleged second species recite that a structure is formed on a multi-layer wafer comprising "a single crystal silicon (SCS) layer separated by an insulator layer from a substrate layer." These are therefore not mutually

exclusive, because the element in question can simultaneously be both a multi-layer wafer and a wafer comprising "a single crystal silicon (SCS) layer separated by an insulator layer from a substrate layer." Similar arguments apply to other elements in the claimed combinations. Applicant submits that no mutual exclusivity therefore exists, and that the species restriction is therefore improper.

Charge Deposit Account

Please charge our Deposit Account No. 02-2666 for any additional fee(s) that may be due in this matter, and please credit the same deposit account for any overpayment.

Respectfully submitted,

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